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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	**CASE NUMBER:**
	§	
EUGENIO ALFREDO AGUILAR, III	§	**10-32129-H5-7**
	§	**(Chapter 7)**
	§	
DEBTOR	§	
	§	
UNITED STATES TRUSTEE	§	**Adversary No.**
	§	
Plaintiff	§	
	§	
v.	§	
	§	
EUGENIO ALFREDO AGUILAR, III	§	
	§	
Defendant	§	

COMPLAINT TO DENY DISCHARGE UNDER 11 U.S.C. § 727

TO THE HONORABLE KAREN K. BROWN
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW the United States Trustee for the Southern District of Texas, by and through the undersigned counsel, who respectfully represents as follows:

Jurisdiction and Venue

1. This is an adversary proceeding in which the Plaintiff is objecting to the discharge of Defendant. The Court has jurisdiction to consider this matter under 28 U.S.C. § 1334 and 11 U.S.C. § 727.

2. This is a core proceeding under 28 U.S.C. § 157(b)(2).

3. Venue is proper in this district under 28 U.S.C. § 1409(a).

Parties

4. Plaintiff is the duly appointed United States Trustee for the Southern District of Texas ("UST") under 28 U.S.C. § 581(a)(7). Plaintiff's address is 515 Rusk, Suite 3516, Houston, Texas, 77002.

5. Pursuant to 11 U.S.C. § 307, Plaintiff has standing to appear and be heard on any issue in a case or proceeding under the Bankruptcy Code. Further, Plaintiff is authorized to bring this proceeding under 11 U.S.C. § 727(c)(1).

6. Pursuant to 28 U.S.C. § 586(a)(3), Plaintiff is statutorily obligated to monitor the administration of cases commenced under the Bankruptcy Code, 11 U.S.C. § 101 *et. seq.* Specifically, Plaintiff is charged with a number of supervisory responsibilities in liquidation cases under chapter 7 of the Bankruptcy Code, including monitoring the progress of such cases and taking such actions as Plaintiff deems to be appropriate to prevent undue delay in such progress. 28 U.S.C. § 586(a)(G).

7. Eugenio Alfredo Aguilar, III ("Defendant") is an individual and debtor in Case No. 10-32129 (Bankr. S.D. Tex.), now pending in this Court. According to the Voluntary Petition, Defendant resided at 2336 Suffolk Drive, Houston, Texas, 77027, on the day of bankruptcy.

According to his testimony at the meeting of creditors and the Rule 2004 examination, Defendant now resides at 131 Beverly Lane, Bellaire, Texas, 77401. Defendant is represented by Richard M. Kaplan, Esq. in the bankruptcy case.

Factual Background

A. Prior Bankruptcy Case

8. According to his testimony at the meeting of creditors and the Rule 2004 examination, Defendant received a chapter 7 discharge in a prior bankruptcy case.

B. Prepetition Business Affairs

9. Defendant is a physician licensed to practice medicine in the State of Texas. Plastic surgery is his primary specialty and otolaryngology is his secondary specialty.

10. From 1992 until about March 15, 2010, Defendant operated his medical practice by and through Eugenio Alfredo Aguilar, III, M.D., P.A. d/b/a Ermosa Centre for Plastic Reconstructive and Aesthetic Surgery.

11. From 2008 to 2010, Eugenio Alfredo Aguilar, III, M.D., P.A. paid monies to Defendant and paid some of Defendant's personal expenses. These monies were booked as loans to Defendant. Defendant did not sign any promissory notes or written agreements obligating Defendant to pay back these loans. On information and belief, Eugenio Alfredo Aguilar, III, M.D., P.A. did not bill Defendant for these loans prior to bankruptcy.

12. According to his 2009 federal income tax return, Defendant received $45,000.00 in salary, $104,000.00 in IRA distributions, and $395,294.00 as the income flow from Eugenio Alfredo Aguilar, III, M.D., P.A. Defendant's 2009 tax liability is $154,587.00 because there was no tax withheld from the loans paid directly or indirectly to Defendant.

C. Prepetition Financial Statement

13. On or about August 31, 2009, Defendant issued a financial statement. In the balance sheet, Defendant listed assets of $4,536,185.00, liabilities of $3,020,886.00, and net worth of $1,515,299.00. The assets include the following artwork:

4 - Hannocks	$108,000.00
1 - Waterhouse	20,000.00
1 - Collins	26,000.00
1 - Rocca	10,200.00
Other	35,800.00
Total	$200,000.00

14. The balance sheet also includes a line item for personal effects, consisting of electronic equipment, furniture, rugs, china, piano, crystal, jewelry, and clothing, valued at $225,000.00.

15. The balance sheet also includes Defendant's interest in Eugenio A. Aguilar, III, M.D., P.A., which is valued at $1,015,871.00. The notes to the balance sheet also refer to life insurance coverage totaling $4,054,000.00.

D. 2010 Individual Bankruptcy Case

16. On March 12, 2010, Defendant filed a voluntary petition seeking relief under chapter 7 of the Bankruptcy Code in Case No. 10-32129 (Bankr. S.D. Tex.) ("2010 Individual Case"). Plaintiff appointed Randy W. Williams ("Williams") to serve as the chapter 7 trustee.

17. The meeting of creditors was held and concluded. On January 14, 2011, Williams filed a Notice of Assets.

18. To date, Defendant has not received a discharge in the 2010 Individual Case.

19. Defendant filed original Schedules A and B on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. Defendant

scheduled total assets of $2,109,303.43.00, including real property valued at $1,800,000.00 and personal property valued at $309,303.43.00. Among other assets, Defendant disclosed an interest in: (a) artwork valued at $5,000.00; (b) household goods and furnishings valued at $12,100.00; and (c) jewelry, consisting of watches, valued at $500.00. The artwork consisted of: "Rocco ($1,000); Hannock - master bedroom ($1,000); Hannock - dining room ($1,000); Chagall - entryway ($1,000)." Defendant failed to disclose in Schedule B his interest in life insurance policies and in Eugenio Alfredo Aguilar, III, M.D., P.A. d/b/a Ermosa Centre for Plastic Reconstructive and Aesthetic Surgery.

20. Defendant filed original Schedules D, E and F on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. Defendant scheduled total liabilities of $3,934,592.74, including secured claims of $2,746,140.62, priority claims of $211,296.87, and general unsecured claims of $977,155.25. In the original Schedules D, E and F, Defendant failed to disclose loans to Defendant by Eugenio Alfredo Aguilar, III, M.D., P.A.

21. Defendant is an individual whose debts are primarily consumer debts.

22. Defendant filed original Schedule I on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. According to Schedule I, Defendant is divorced and does not have any dependents. Defendant is self-employed as a physician. Defendant reported gross monthly pay of $20,000.00. Defendant's average net monthly pay is reported to be $14,000.00.

23. Defendant filed original Schedule J on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. Schedule J disclosed

monthly expenditures of $22,510.93. Defendant's monthly deficit is reported to be $8,510.93.

24. Defendant filed the original Statement of Financial Affairs on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. In the Statement of Financial Affairs, Defendant disclosed gross annual earnings from his medical practice of $15,000.00 in 2010 YTD, $48,500.00 in 2009, and $342,550.00 in 2008. In the original Statement of Financial Affairs, Defendant did not disclose any gifts, losses, or transfers.

25. Defendant filed the Chapter 7 Statement of Current Monthly Income and Means-Test Calculation on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. Defendant disclosed $5,000.00 as his current monthly income during the means-test period of September 1, 2009 through February 28, 2010. Defendant failed to disclose payments of his personal expenses by Eugenio Alfredo Aguilar, III, M.D., P.A.

E. 2010 P.A. Bankruptcy Case

26. On March 12, 2010, Eugenio Alfredo Aguilar, III, M.D., P.A. filed a voluntary petition seeking relief under chapter 7 of the Bankruptcy Code in Case No. 10-32130 (Bankr. S.D. Tex.) ("2010 P.A. Case"). Plaintiff appointed Williams to serve as the chapter 7 trustee.

27. The meeting of creditors was held and concluded. Williams is holding the 2010 P.A. Case open for potential assets.

28. Defendant is the owner of Eugenio Alfredo Aguilar, III, M.D., P.A. Defendant, on behalf of Eugenio Alfredo Aguilar, III, M.D., P.A., filed original Schedules A and B on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. Eugenio Alfredo Aguilar, III, M.D., P.A. scheduled total assets of $49,674.40, all of which is personal property. Defendant and Eugenio Alfredo Aguilar, III, M.D., P.A. failed to list as

an asset the outstanding loans to Defendant.

29. Defendant, on behalf of Alfredo Aguilar, III, M.D., P.A., filed the original Statement of Financial Affairs on or about March 12, 2010, and certified under penalty of perjury that the information disclosed therein was true and correct. Defendant and Alfredo Aguilar, III, M.D., P.A. failed to list the payment of $104,000.00 from the Defendant's IRA Rollover and the transfers, in the form of loans, to Defendant.

F. Testimony at Meeting of Creditors

30. At the meetings of creditors held on or about April 20, 2010, and July 12, 2010, Defendant testified under oath that he read and reviewed the documents filed in the bankruptcy case under § 521 and that he had no amendments or changes to the documents as filed. Defendant also testified that he listed all his assets and liabilities. According to his testimony, Defendant filed for chapter 7 relief because of a seventy percent (70%) drop in revenues due to Hurricane Ike and a downturn in the economy.

31. Defendant also testified under oath about a transfer in January of 2009 of $104,000.00 from Defendant's IRA rollover to Eugenio Alfredo Aguilar, III, M.D., P.A. Defendant also transferred in or about 2008 another $100,000.00 to Eugenio Alfredo Aguilar, III, M.D., P.A. Defendant failed to disclose these transfers in the original or amended Statement of Financial of Financial Affairs.

32. Defendant also testified under oath that he transferred some firearms to Kenneth N. Ellis ("Ellis"), a neighbor, in or about December of 2008 after his former spouse filed a divorce proceeding. On information and belief, the firearms consist of a 9mm Beretta pistol and a 9mm Sig Sauer pistol, valued collectively at $800.00. Defendant testified that he failed to disclose the transfer

of these firearms in the original Statement of Financial Affairs because he had given the firearms away.

33. Defendant also testified under oath that he owned life insurance policies on the day of bankruptcy but did not disclose them because they have no cash surrender value.

34. Defendant also testified under oath that he owned six (6) watches on the day of bankruptcy. Defendant valued the watches at $500.00 in original Schedule B. On the day of bankruptcy, Defendant had an interest in nine (9) watches, including a Rolex Oyster Perpetual made of 14k gold with ten (10) diamonds and another Rolex Oyster Perpetual made of gold.

35. Defendant also testified under oath that he would amend original Schedule B in the 2010 P.A. Case to reflect the loans to Defendant as property of the estate.

G. Rule 2004 Examination

36. At the Rule 2004 examination held on or about January 25, 2011, Defendant testified under oath that he read and reviewed the documents filed in the bankruptcy case under § 521 and that he listed all his assets and liabilities.

37. The amendment to Schedule B filed on September 23, 2010, lists a value of $72,000.00 for artwork. Defendant testified under oath that original Schedule B and the amendment to Schedule B filed on August 27, 2010, did not make full disclosure of the artwork because Defendant was depressed, stressed, and unable to think clearly.

38. Defendant testified under oath that he did not know why original Schedule B, the amendment to Schedule B filed on August 27, 2010, and the amendment to Schedule B filed on September 23, 2010, did not disclose his interest in Eugenio Alfredo Aguilar, III, M.D., P.A. He stated that he relied on his attorney and accountant.

39. Defendant testified under oath that he could not explain why original Schedule F did not disclose that Eugenio Alfredo Aguilar, III, M.D., P.A. was a creditor of Defendant in connection with the shareholder loans.

40. On or about March 15, 2010, Defendant incorporated E. Fred Aguilar, M.D., P.A., a new professional association that handles Defendant's medical practice.

H. Counts

Count I - Denial of Discharge Under 11 U.S.C. § 727(a)(2)(A)

41. Plaintiff re-alleges and incorporates by reference herein, the allegations set forth in paragraphs 1 through 40 of this Complaint.

42. Plaintiff objects to the discharge of Defendant under 11 U.S.C. § 727(a)(2) on the grounds that within one year before the commencement of the bankruptcy case, Defendant transferred, or permitted to be transferred, property of Defendant. Specifically, in or around December of 2008, Defendant transferred firearms to Ellis for no consideration after Defendant's former spouse filed the divorce proceeding.

43. Defendant made the transfer of the firearms to Ellis with intent to hinder, delay or defraud Defendant's creditors.

44. The discharge of Defendant should be denied under 11 U.S.C. § 727(a)(2)(A).

Count II - Denial of Discharge Under 11 U.S.C. §§ 727(a)(2)(A) and (B)

45. Plaintiff re-alleges and incorporates by reference herein, the allegations set forth in paragraphs 1 through 44 of this Complaint.

46. Plaintiff objects to the discharge of Defendant under 11 U.S.C. § 727(a)(2) on the grounds that after the date of filing of the petition, Defendant concealed, or permitted to be

concealed, property of Defendant or property of the estate.

47. Specifically, Defendant failed to disclose his interest in Eugenio Alfredo Aguilar, III, M.D., P.A. and therefore concealed his interest in property with intent to hinder, delay or defraud Defendant's creditors or an officer of the estate charged with custody of property under the Bankruptcy Code.

48. The discharge of Defendant should be denied under 11 U.S.C. § 727(a)(2)(A) and (B).

Count III - Denial of Discharge Under 11 U.S.C. § 727(a)(3)

49. Plaintiff re-alleges and incorporates by reference herein, the allegations set forth in paragraphs 1 through 48 of this Complaint.

50. Defendant has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which Defendant's financial condition or business transactions might be ascertained, and such act or failure to act was not justified under all of the circumstances of the case. Specifically, Defendant has failed to produce to date (i) bank statements for Chase Bank (account no. 0114) and Frost National Bank (account no. 3290) from January 1, 2009, through December 31, 2010, (ii) bank statements for JPMorgan Chase Bank (account no. 6480) from March 24, 2010, through December 31, 2010; (iii) financial statements for Eugenio Alfredo Aguilar, III, M.D., P.A. from January 1, 2009, through March 31, 2010, (iv) financial statements for E. Fred Aguilar, M.D., P.A. from September 1, 2010, through December 31, 2010; and (v) a transaction report of shareholder loans from March 13, 2010, through December 31, 2010.

51. The discharge of Defendant should be denied under 11 U.S.C. § 727(a)(3).

Count IV-Denial of Discharge Under 11 U.S.C. § 727(a)(4)(A)

52. Plaintiff re-alleges and incorporates by reference herein, the allegations set forth in paragraphs 1 through 51 of this Complaint.

53. On or about March 12, 2010, August 27, 2010, and September 23, 2010, Defendant knowingly and fraudulently made false oaths in the 2010 Individual Case. Under penalty of perjury, Defendant certified that original Schedule B filed on March 12, 2010, the amendment to Schedule B filed on August 27, 2010, and the amendment to Schedule B filed on September 23, 2010, filed in the 2010 Individual Case were true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Schedule B filed on March 12, 2010, the amendment to Schedule B filed on August 27, 2010, and the amendment to Schedule B filed on September 23, 2010, omitted any reference to Eugenio Alfredo Aguilar, III, M.D., P.A. and life insurance policies.

54. Under penalty of perjury, Defendant certified that original Schedule B filed on March 12, 2010 and the amendment to Schedule B filed on August 27, 2010, filed in the 2010 Individual Case were true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Schedule B filed on March 12, 2010, and the amendment to Schedule B filed on August 27, 2010, failed to disclose all of Defendant's interest in artwork.

55. Under penalty of perjury, Defendant certified that original Schedule B filed on March 12, 2010 and the amendment to Schedule B filed on August 27, 2010, filed in the 2010 Individual Case were true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Schedule B filed on March 12, 2010, and the

amendment to Schedule B filed on August 27, 2010, failed to disclose all of Defendant's interest in watches.

56. Under penalty of perjury, Defendant certified that original Schedule F filed on March 12, 2010, filed in the 2010 Individual Case was true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Schedule F filed on March 12, 2010, omitted any reference to the debt of $654,000.00 for outstanding loans from Eugenio Alfredo Aguilar, III, M.D., P.A. and the debt of $184,470.00 for the lease of the medical practice space at the University of Texas Professional Building.

57. Under penalty of perjury, Defendant certified that original Chapter 7 Statement of Current Monthly Income and Means-Test Calculation filed on March 12, 2010, filed in the 2010 Individual Case was true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Chapter 7 Statement of Current Monthly Income and Means-Test Calculation filed on March 12, 2010, omitted any reference to income in the form of payments of his personal expenses by Eugenio Alfredo Aguilar, III, M.D., P.A.

58. Under penalty of perjury, Defendant certified that the original Statement of Financial Affairs filed on March 12, 2010, filed in the 2010 Individual Case was true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Statement of Financial Affairs filed on March 12, 2010, omitted any reference to transfers within two (2) years of bankruptcy of firearms to Ellis. Further, the original Statement of Financial Affairs filed on March 12, 2010, and the amendment to the Statement of Financial Affairs dated September 10, 2010, omitted any reference to the transfers from Defendant's IRA rollover to Eugenio Alfredo Aguilar, III, M.D., P.A.

59. As provided in 28 U.S.C. § 1746, such certifications had like force and effect as an oath.

60. Further, Defendant knowingly and fraudulently made false oaths at the meeting of creditors and at the Rule 2004 examination when he testified that all information in the documents filed in the 2010 Individual Case was true and correct.

61. The discharge of Defendant should be denied under 11 U.S.C. § 727(a)(4)(A).

Count V-Denial of Discharge Under 11 U.S.C. § 727(a)(5)

62. Plaintiff re-alleges and incorporates by reference herein, the allegations set forth in paragraphs 1 through 61 of this Complaint.

63. Defendant has failed to explain satisfactorily, before a determination of denial of discharge, any loss of assets or deficiency of assets to meet Defendant's liabilities.

64. The discharge of Defendant should be denied under 11 U.S.C. § 727(a)(5).

Count VI-Denial of Discharge Under 11 U.S.C. § 727(a)(7)

65. Plaintiff re-alleges and incorporates by reference herein, the allegations set forth in paragraphs 1 through 64 of this Complaint.

66. Defendant is an "insider" in connection with Eugenio Alfredo Aguilar, III, M.D., P.A. under the meaning of 11 U.S.C. § 101(31).

67. Defendant knowingly and fraudulently committed false oaths in the 2010 P.A. Case. Under penalty of perjury, Defendant certified that the original Schedule B filed on March 12, 2010, filed in the 2010 P.A. Case was true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Schedule B filed on March 12, 2010, omitted any reference to outstanding loans made to Defendant as property of the

estate.

68. Defendant knowingly and fraudulently committed false oaths in the 2010 P.A. Case. Under penalty of perjury, Defendant certified that the original Statement of Financial Affairs filed on March 12, 2010, filed in the 2010 P.A. Case was true and correct to the best of Defendant's knowledge, information and belief, when in truth in fact, as Defendant then well knew, the original Statement of Financial Affairs filed on March 12, 2010, omitted any reference to transfers within two (2) years of bankruptcy of monies to Defendant in the form of loans and omitted any reference to the payments from Defendant's IRA Rollover.

69. The discharge of Defendant should be denied under 11 U.S.C. § 727(a)(11).

WHEREFORE, Plaintiff prays that the discharge of Defendant be denied, and that Plaintiff have such other and further relief as is just.

Dated: January 31, 2011

Respectfully Submitted,

JUDY A. ROBBINS
UNITED STATES TRUSTEE

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